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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 JAMES K. WARD,

12 Plaintiff,

13 vs.

14 UNITED STATES GOVERNMENT  
15 DEPARTMENT OF DEFENSE,  
16 DEFENSE FINANCE AND  
ACCOUNTING SERVICE AGENCY  
(DFAS),

17 Defendants.

CASE NO. 07cv164 BTM (LSP)

**ORDER STRIKING AMENDED  
COMPLAINT [Doc. #27]**

18 On January 23, 2007, Plaintiff, a non-prisoner proceeding pro se, filed a complaint  
19 with this Court alleging that Defendants have refused to expedite his severance in  
20 accordance with Department of Defense Financial Management Regulation Volume 7(A),  
21 Chapter 35, which is promulgated pursuant to 5 U.S.C. § 5545(c)(1). Defendants filed a  
22 motion to dismiss or, in the alternative, for a more definite statement. In an order entered  
23 July 3, the Court granted the alternative motion for a more definite statement and directed  
24 Plaintiff to file an amended complaint by July 27.

25 Plaintiff filed his First Amended Complaint on July 23. Defendants thereafter filed a  
26 second motion for a more definite statement, which is presently calendared for hearing on  
27 October 19. On August 24, Plaintiff filed a short document entitled "Request to Deny Both  
28 Defendants Motion To Dismiss, And Second Motion for a More Definite Statement Pursuant

1 to Fed.R.Civ.P. 8(e)(2).” The document was accepted for filing and docketed as an  
2 opposition to Defendants’ pending motion for a more definite statement.

3 On September 21, 2007, Plaintiff filed an “Amended Complaint,” which he explains  
4 was filed in order to add the EEO (“Equal Employment Opportunity”) as a defendant.  
5 However, Plaintiff may not simply file an amended complaint whenever he wishes. Federal  
6 Rule of Civil Procedure 15(a) specifies:

7 A party may amend the party's pleading once as a matter of course at any  
8 time before a responsive pleading is served or, if the pleading is one to which  
9 no responsive pleading is permitted and the action has not been placed upon  
10 the trial calendar, the party may so amend it at any time within 20 days after  
it is served. Otherwise a party may amend the party's pleading only by leave  
of court or by written consent of the adverse party; and leave shall be freely  
given when justice so requires.

11 Since Plaintiff already filed a first amended complaint in response to the Court’s July 3 order,  
12 he no longer may amend as of right. Accordingly, Plaintiff may only file an amended  
13 complaint with leave of the Court, or with the consent of Defendants.

14 Because Plaintiff was not granted leave to file his latest amended complaint, the Clerk  
15 is directed to **STRIKE** it from the docket. If Plaintiff wishes to re-file his second amended  
16 complaint, he must first make a motion for leave to file in accordance with Rule 15(a). Only  
17 if such leave is granted will Plaintiff be permitted to file a second amended complaint. In  
18 accordance with Civil Local Rule 7.1(b), before filing any motion for leave, Plaintiff must  
19 contact this Court’s chambers and request a hearing date for that motion. The telephone  
20 number for chambers is available on the website for the district court  
21 ([www.casd.uscourts.gov](http://www.casd.uscourts.gov)).

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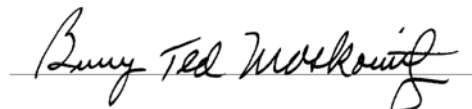
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1 In addition, Plaintiff is advised that any amended complaint must be "complete within  
2 itself without reference to the superseded pleading." CivLR 15.1. Therefore, any second  
3 amended complaint that Plaintiff wishes to file would need to meet all of the requirements set  
4 out in this Court's July 3 order and could not make reference to either the original or first  
5 amended complaints.

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7 **IT IS SO ORDERED.**

8 DATED: September 28, 2007

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11 Honorable Barry Ted Moskowitz  
12 United States District Judge  
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